IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Bail Appl..No. 4736 of 2007()

CRMP.227/2007 of ADDL. ASSISTANT SESSIONS JUDGE, KOLLAM.

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PETITIONER

ABDUL NAZAR MADANI,
S/O ABDUL SAMAD, THOTTUVA VEEDU,
VENGA MURI, MYNAGAPPALLY VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.K.A.HASSAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY D.G.P. SRI.P.G. THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.4736 OF 2007

Dated this the 1st day of August, 2007

ORDER

Application for regular bail. The petitioner is the 4th accused in a Sessions Case for offences punishable, inter alia, under Secs.307 and 332 of the IPC and Sec.3(2) of the P.D.P.P. Act. Altogether, there are 102 accused persons. Investigation was conducted. Final report was filed. The learned Sessions Judge numbered the case S.C.No.216/95. The petitioner had appeared before the learned Sessions Judge and was enlarged on bail.

2. But subsequently the petitioner became an accused in another case - in what is known as `Coimbatore blast case'. He was detained in custody in that case. The fact that he was detained in custody was brought to the notice of the learned Additional Assistant Sessions Judge before whom the Sessions Case was pending. A production warrant was issued. The

Coimbatore police expressed their inability to produce the petitioner before the learned Sessions Judge on security reasons. There was a ban order from the Government of Tamil Nadu. Be that as it may, the petitioner was not produced. Obviously, his failure to appear was not traceable to any wilful conduct on his part as he was in custody and the production warrant was not complied with by the authorities who kept him in custody. But surprisingly the bail granted to the petitioner was cancelled for non-appearance, it is submitted. Efforts to procure the presence of the petitioner failed as he was in custody.

3. The learned counsel for the petitioner has now come before this Court with a prayer that he may be released on bail. He did apply before the learned Additional Assistant Sessions Judge, Quilon, for bail. But that application was rejected holding that the petitioner is not in the custody of the court. It is, in these circumstances, that the petitioner has come before this Court now with this application for bail.

4. The learned counsel for the petitioner submits that the petitioner has now been found not guilty and acquitted in the case pending at Coimbatore. Inasmuch as the production warrant is issued by the learned Sessions Judge, he is unlikely to be released from custody and he is likely to be produced before

the learned Sessions Judge in pursuance of the warrant of arrest issued by him.

5. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that the State has no objection in the petitioner being enlarged on bail in this case which now bears the number S.C.206/03 of the Additional Assistant Sessions Judge, Quilon (earlier No.216/95). Some other co-accused have already been acquitted, it is submitted.

6. Taking all the relevant circumstances into account, I am satisfied that the petitioner is entitled to be enlarged on bail. He was on bail. His later non-appearance cannot be attributed to any wilful conduct on his part. In these circumstances, it is not necessary to insist that the petitioner must continue in custody. Of course, appropriate conditions will have to be imposed to ensure that the petitioner continues to appear before the court below in this case and facilitate expeditious disposal of the case against him.

7. **In the result:**

(a) The application is allowed.

(b) The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- with

two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall appear before the learned Sessions Judge on all future dates of posting unless his absence be condoned by the learned Sessions Judge concerned.

8. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge